International Brotherhood of Electrical Workers, Local Union No. 98 *and* Lucent Technologies, Inc. *and* Communications Workers of America, District 13 and Local 13590, AFL–CIO. Cases 4–CD–945 and 4–CD–946

August 12, 1997

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The charges in this Section 10(k) proceeding were filed on July 19, 1996, and July 22, 1996, by John B. Langel on behalf of Lucent Technologies, Inc., and by Communication Workers of America District 13, Local 13590, AFL–CIO, respectively. The charges allege that the Respondent, International Brotherhood of Electrical Workers Local Union No. 98 (Local 98) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Lucent Technologies, Inc. (the Employer) to assign certain work to employees represented by Local 98 rather than to employees represented by Communication Workers of America District 13, Local 13590, AFL–CIO (CWA). A hearing was held on September 17 and September 24, 1996, before Hearing Officer Juditra Burgess. The Employer, Local 98, and CWA have filed posthearing briefs.

The National Labor Relations Board affirms the hearing officer's rulings, and finds them free from prejudicial error.[1] On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a New Jersey corporation, is engaged in the business of installing telecommunications equipment. During the past year, it purchased and received goods valued in excess of $50,000 directly from points located outside the State of New Jersey and received gross revenues in excess of $500,000. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that Local 98 and CWA are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

On July 1, 1996,[2] the Employer commenced a project to install 5E power plants and electronic switches at a building located at 401 North Broad Street in Philadelphia, Pennsylvania, to enable Sprint, Inc. to operate cellular phone systems. Since July about 20 different employees of the Employer, represented by CWA, have worked at the site. These employees are classified either as communications equipment installers Code 3, associate communications service technicians Code 4, or senior communications service technicians Code 5. All three categories are assigned to the Employer's operations unit within its business communications system.

On July 19, the Employer's operations supervisor, Lawrence Blasko, observed picketing at the Employer's entrance to the 401 North Broad Street location and at its parking garage and loading dock areas. After he observed the pickets, Blasko spoke with Ed Coppinger, who identified himself as a representative of Local 98. Coppinger stated to Blasko that the pickets belonged to Local 98 and that Local 98 was shutting down the Employer's operation at the 401 North Broad Street building. Coppinger also stated that Local 98 would not allow the Employer's employees to enter the 401 North Broad Street building. Because of the picketing, no employees of the Employer entered the 401 North Broad Street building.

According to William Lake, president of CWA, who also is employed by the Employer as an installer, Coppinger identified himself to Lake as the business agent for Local 98 during a visit to the 401 North Broad Street location on the second week of July. Coppinger was at the site to check the union membership status of the Employer's employees. Coppinger told Lake that the installation work was Local 98 work and ''they were going to do it.'' When Lake indicated that CWA had a contract with the Employer to perform the work and ''were going to do it from A to Z,'' Coppinger replied, ''we'll see about that.'' Thereafter, on the morning of July 19, Lake observed 25 to 30 Local 98 pickets at the Employer's entrance to the 401 North Broad Street location. On July 20, Lake observed 30 to 35 Local 98 pickets at the project. According to Lake, the Employer's employees were unable to work on July 19 and 20, because the entrance to the 401 North Broad Street location was blocked by the pickets. Lake testified that he was also scheduled

[1] Local 98 contends that the hearing officer demonstrated bias against Local 98 and denied it due process by admitting into evidence allegedly irrelevant evidence. After a careful review of the record and the hearing officer's rulings, we find no merit to Local 98's contentions.

[2] All dates are in 1996 unless stated otherwise.

to work on July 21 but that his supervisor told him not to report to the site.[3]

As noted, charges were filed in this proceeding on July 19 and 22, and a hearing was conducted on September 17. On September 4, counsel for Local 98 stated in a letter to the Regional Director for Region 4 that Local 98 disclaimed any interest in the work in dispute. As of the date of the hearing, the work in dispute at the 401 North Broad Street location was nearing completion.

B. *Work in Dispute*

The work in dispute is the installation of 5 ESS digital switch and power plant telephone systems at the Sprint, Inc. facility located at 401 North Broad Street in Philadelphia, Pennsylvania.

C. *Contentions of the Parties*

The Employer and CWA contend that there is reasonable cause to believe that Local 98 violated Section 8(b)(4)(D) of the Act. They further contend that the work in dispute should be assigned to the Employer's present employees represented by CWA on the basis of the Employer's bargaining agreements with CWA covering these employees; company preference and past practice; area practice; relative skills; and economy and efficiency of operations.

Local 98 contends that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the Notice of Hearing should be quashed on the basis of its September 4 letter stating that it disclaimed interest in the work in dispute. Local 98 makes no specific contention that, if an award is made, any factor supports an award of the work in dispute to employees represented by Local 98.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

During the second week in July, Local 98 Business Agent Coppinger claimed the work in dispute when he told Lake that the installation work at the 401 Broad Street facility was Local 98's work and that ''they were going to do it.'' When Lake asserted that the work was CWA's work, Coppinger stated ''we'll see about that.'' Coppinger's remarks were followed by the presence of Local 98 pickets on July 19 and 20. After Operations Supervisor Blasko observed the picketing on July 19, Coppinger told him that the pickets were from Local 98 and that Local 98 was shutting down the Employer's operations at the 401 North Broad Street facility and would not allow the Employer's employees to enter that facility. The Employer's employees were unable to work on July 19 and 20 because of Local 98's activities.

Based on the foregoing, it is clear that Local 98, through Business Agent Coppinger, made oral claims for the work in dispute at the 401 North Broad Street facility. Thereafter, Local 98 engaged in picketing to shut down the 401 North Broad Street worksite on July 19 and 20 so as not to allow the Employer's employees to perform the work in dispute. In these circumstances,we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

We find no merit to the Local 98's contention that reasonable cause does not exist and that the Notice of Hearing should be quashed on the basis of its September 4 letter to the Regional Director. The purported disclaimer of interest sent on September 4 was made several weeks after the occurrence of the conduct at issue in this proceeding (on July 19 and 20) and was made only after the issuance of the Notice of Hearing. Further, the purported disclaimer was made only a few weeks before the work in dispute was nearing completion. The disclaimer was confined to the particular site involved. In addition, at a hearing in Case 4–CD–935, held a month before the picketing herein, Local 98 made a similar disclaimer with respect to the same type of work at a different site. Thus, we do not believe that the disclaimer herein effectively resolves this multisite dispute. In these circumstances, we find that Local 98's purported disclaimer of September 4 was ineffective and that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. Finally, there is no evidence indicating that a voluntary method of resolving the jurisdictional dispute exists that would be binding on all the parties.

Having found that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act, we conclude that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction*), 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

[3] Employee Brian Nisbet also testified to picketing activities of July 19 and 20 consistent with Lake's testimony.

1. Certifications and collective-bargaining agreements

The Employer and CWA have an existing collective-bargaining agreement covering the installation work in dispute. The Employer's predecessor performed the type of work in dispute for many years and employees represented by CWA have performed that work for the predecessor and the Employer for about 60 years. Accordingly, this factor favors an award of the work in dispute to employees represented by CWA.

2. Company preference and past practice

The Employer prefers to assign the work in dispute to employees represented by CWA consistent with the longstanding practice of assigning such work to those employees. Accordingly, we find that this factor favors an award of the disputed work to employees represented by CWA.

3. Area and industry practice

Lake testified that employees represented by CWA have installed five ESS telephone switching systems on a daily basis in the Philadelphia area during the last 10 to 15 years. Further, as noted, employees represented by CWA have performed switching work for the Employer and its predecessor for about 60 years. There is no evidence that employees represented by Local 98 have performed a comparable degree of the work in dispute. Accordingly, this factor supports an award of the work in dispute to employees represented by CWA.

4. Relative skills

The evidence is clear that the work in dispute is complex and that employees represented by CWA performing such work receive particularized training to perform their work tasks. Lake testified that he has received training at power schools and electronic switching school and has received training to lay out floors and to put together electronic switches and cross bar switches. There is no evidence that employees represented by Local 98 possess comparable skills or training to perform the work in dispute. This factor favors an award of the work in dispute to employees represented by CWA.

5. Economy and efficiency of operations

The evidence establishes that the Employer's own employees represented by CWA are familiar with the work in dispute and that this work is intense, concentrated over a short period of time, is highly coordinated, and, as noted, requires particularized training. There is no evidence that assignment of the work to employees represented by Local 98 would be as economical and efficient. Accordingly, this factor favors an award of the disputed work to employees represented by CWA.

Conclusion

After considering all the relevant factors, we conclude that employees represented by CWA are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, company preference and past practice, area and industry practice, relative skills, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by CWA, not to that union or its members.

Scope of the Award

The Employer and the CWA seek a broad award applicable to all digital switch and power plant installation work performed by the Employer within all geographical areas in which the jurisdiction of the CWA and Local 98 coincide. They note that previous Section 8(b)(4)(D) charges have been filed against Local 98 and contend that Local 98 has demonstrated a proclivity to engage in the kind of conduct giving rise to the present proceeding.

When a union demonstrates a proclivity to engage in unlawful conduct and there is an indication that the dispute regarding an employer's work is likely to recur, the Board will issue an award broad enough to encompass the geographical area in which an employer does business and in which the jurisdictions of the competing unions coincide. *Plumbers Local 155 (Allied/Hussman)*, 222 NLRB 796 (1976).

In *Electrical Workers IBEW Local 98 (Lucent Technologies*), 324 NLRB 226 (1997), the Board found, in a parallel Section 10(k) proceeding, that reasonable cause exists to believe that Local 98 violated Section 8(b)(4)(D) with regard to a dispute between Local 98 and CWA concerning the Employer's installation of telecommunications wiring. In that proceeding, like the present case, Local 98 claimed the work in dispute and then engaged in picketing to prevent the Employer's CWA-represented employees from performing the work in dispute. Although the work in dispute in both cases is not identical, these parallel cases demonstrate a proclivity on the part of Local 98 to engage in unlawful conduct in order to obtain work in dispute performed by the Employer. These cases also demonstrate that there is a continuous controversy between Local 98 and CWA regarding the Employer's installation of various forms of telecommunications equipment.[4] In

[4] We note in this regard that, in a previous case, the Regional Director for Region 4 in Case 4–CD–935 found in June 1996 that there was reasonable cause to believe that Local 98 engaged in picketing with an object of forcing the Employer to reassign telecommunications switching system and power plant work from CWA to Local 98. The Regional Director withdrew the notice of hearing in that case only after Local 98 disclaimed interest in the work in dispute.

these circumstances, which show a likelihood of recurring disputes and a proclivity to engage in unlawful conduct, we find it appropriate to make a determination covering assignment of the work in dispute in the geographical area in which the Employer does business and in which the geographical jurisdictions of Local 98 and CWA coincide.[5]

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Lucent Technologies, Inc., represented by the Communications Workers of America, District 13 and Local 13590, AFL–CIO, are entitled to perform the work of installing five ESS digital switch and power plant telephone systems installed by Lucent Technologies, Inc., wherever the geographical jurisdictions of International Brotherhood of Electrical Workers, Local Union No. 98 and Communications Workers of America, District 13 and Local Union No. 13590, AFL–CIO, coincide.

2. International Brotherhood of Electrical Workers, Local Union. No. 98 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Lucent Technologies, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Brotherhood of Electrical Workers, Local Union No. 98 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing Lucent Technologies, Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

[5] We find no merit to Local 98's contention that entry of a broad award would deprive Local 98 of due process. The record shows that Local 98 was put on notice of the Charging Parties' request for a broad award at the outset of the hearing. Further, we note that the hearing officer granted Local 98's request for a continuance of the hearing, in response to the positions of the Charging Parties, and that Local 98 had ample time to prepare its case.